



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

CHAN

February 8, 2013

Memorandum for: Deputy Commissioner Trials

Re: **Police Officer Scott Vincent**
Tax Registry No. 905247
Midtown South Precinct
Disciplinary Case No. 2010-2270

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on June 5, 2012 and August 7, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2010-2270

1. Said Police Officer Scott Vincent, assigned to the 14th Precinct, while off-duty, on or about November 3, 2009, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer refused to cooperate with an on-going investigation regarding stolen I Phones being conducted by the Port Authority Police Department from Newark International Airport. (*As amended*)

PG 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT PROHIBITED
CONDUCT,
GENERAL REGULATIONS**

2. Said Police Officer Scott Vincent, assigned to the 14th Precinct, while off-duty, on or about November 3, 2009, having become aware of an allegation of corruption or other misconduct involving a member of the service, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Page 1, Paragraph 1

**ALLEGATIONS OF CORRUPTION
AND SERIOUS MISCONDUCT
AGAINST MEMBERS OF THE
SERVICE**

3. Said Police Officer Scott Vincent, assigned to the 14th Precinct, while off-duty, on or about May 25, 2010, did wrongfully impede a Department investigation, to wit: said Police Officer Scott Vincent, by making vague and non-responsive answers at his PG 206-13 hearing, which prevented the Department from coming to a conclusion as to what transpired with regards to the Port Authority Police Department's investigation of stolen I-Phones from Newark International Airport.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT PROHIBITED
CONDUCT,
GENERAL REGULATIONS**

In a Memorandum dated January 7, 2013, Assistant Deputy Commissioner Vinal found Police Officer Vincent Guilty of Specification No. 1, Not Guilty of Specification No. 2, and Guilty In Part of Specification No. 3 in Disciplinary Case No. 2010-2270. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Vincent's uncooperative behavior, combined with his vague and non-responsive answers during a PG 206-13 hearing were outrageous. Such egregious misconduct warrants a greater penalty. Therefore, Police Officer Vincent shall be immediately suspended, without pay, for a thirty (30) day period, forfeit thirty (30) vacation days, and be placed on a one year dismissal probation period, as a disciplinary penalty.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly". The signature is stylized with a large, loopy initial "R" and a long, sweeping underline.

Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

January 7, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Scott Vincent
Tax Registry No. 905247
Midtown South Precinct
Disciplinary Case No. 2010-2270

The above named member of the Department appeared before me on June 5, 2012 and August 7, 2012, charged with the following:

1. Said Police Officer Vincent Scott,¹ assigned to the 14th Precinct, while off duty, on or about November 3, 2009, said Police Officer Vincent Scott engaged in conduct prejudicial [*sic*] to good order, efficiency or discipline of the Department to wit: Police Officer refused to cooperate with an on going investigation regarding stolen I-Phones being conducted by the Port Authority Police Department from Newark International Airport. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED
CONDUCT,
GENERAL REGULATIONS [*sic*]

2. Said Police Officer Vincent Scott, assigned to the 14th Precinct [*sic*], while off duty, on or about November 3, 2009, having become aware of an allegation of corruption or other misconduct involving a member of the service, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207 21, Page 1, Paragraph 1 – ALLEGATIONS OF CORRUPTION AND
SERIOUS MISCONDUCT AGAINST
MEMBERS OF THE SERVICE

3. Said Police Officer Vincent Scott, assigned to the 14th Precinct, while off-duty, on or about May 25, 2010, did wrongfully impede a Department investigation, to wit: said Police Officer Scott Vincent, by making vague and non-responsive answers at his PG 206-13 hearing, which prevented the Department from coming to a conclusion as

¹ As written in the charges.

to what transpired with regards to the Port Authority Police Department's investigation of stolen I Phones from Newark International Airport.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED
CONDUCT,
GENERAL REGUALTIONS [sic]

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 1 and Guilty in Part of Specification No. 3. Respondent is found Not Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Eric Lynch and Sergeant Javier Santos as witnesses.

Eric Lynch

Lynch is a Port Authority Police Department (PAPD) detective who has served as a member of the PAPD for nine years. He recalled that on July 14, 2009, he was assigned a case involving the theft of electronic devices, including iPhone cell phones, from the Federal Express warehouse at Newark Airport. Lynch served subpoenas on

Apple (iPhone's manufacturer) and on AT&T (the cell phone service provider) in order to obtain cell phone call records regarding the stolen cell phones. Through his examination of these records, Lynch identified Respondent as one of people who had used one of the stolen cell phones. On August 11, 2009, Lynch went to Respondent's residence [REDACTED] for the purpose of interviewing him. No one answered when Lynch knocked on the door of Respondent's residence, so Lynch left his PAPD business card and a note to Respondent requesting that he call Lynch with the building's doorman. Respondent never called Lynch.

That same day, Lynch drove [REDACTED] to speak with Person A, who had been identified through the cell phone records as someone who had made or received calls from three of the stolen iPhones. Person A told Lynch that he had received three cell phones from Respondent and that Respondent was a New York City Police Officer. Person A also told Lynch that he had kept one of the phones for himself and that he had mailed the other two cell phones to his daughter in California. He explained to Lynch that he had accepted the three cell phones because he and Respondent were friends and that they had previously worked together as emergency medical technicians. The next day, Lynch's supervisor notified the Department's Internal Affairs Bureau (IAB) about their ongoing investigation and what Person A had told Lynch about Respondent.

In September 2009, Lynch interviewed Person B, another person who had been identified as a user of a stolen phone. Person B told Lynch that she had received a cell phone from Respondent who was a close friend. She explained that Respondent gave her the phone as a gift for watching his dog for him.

Lynch telephoned Respondent at his residence on November 3, 2009. Lynch recorded their conversation which lasted about 25 minutes. Lynch explained that the purpose of the call was to see if Respondent would cooperate with his investigation and tell Lynch where and how he had obtained the iPhones that he had given to Person A and Person B. Lynch recalled that during their conversation he requested that Respondent meet with him face to-face but that Respondent was unwilling to do this.

Department Exhibit (DX) 1 is the compact disc recording of the November 3, 2009, telephone conversation between Lynch and Respondent which Lynch recorded. DX 1A is the transcript of this conversation. The following is a summary of that conversation:

Lynch identified himself to Respondent as a member of the PAPD. Lynch told Respondent, "Your name came up in an investigation, and we're hoping you could actually help us out." Lynch then asked Respondent if they could meet in person. Lynch proposed meeting on Friday, but Respondent replied that he needed to work that day. Lynch reiterated to Respondent, "Your name came up in an investigation that we need to speak with you about."

Lynch clarified, "I think more of you as a witness than anything else, but I just need to speak with you." Respondent replied, "I'm just hearing you on the phone, I don't know who you are. . . . I don't even know how you got my number." Lynch told Respondent, "We'd like to meet you. If you want you can come to the office and meet on, you know, maybe like Friday or something." When Respondent stated, "Again, you're not even telling me anything what this is about, and why are you calling me," Lynch reiterated, "I'm calling you because your name came up in an investigation." He

explained to Respondent that the investigation dealt with his cell phone number appearing multiple times on a call list, that they needed to speak in person, and that he could meet Respondent in New York City but would prefer if Respondent came to the PAPD Newark Airport Detective Office.

Respondent asked for more information about the investigation, but Lynch told him that he did not want to discuss the matter over the phone. Respondent acknowledged that he had received the business card that Lynch had left at his residence. He told Lynch, "You could come to my job. I think you know where I work. . . . I don't know how you got my number, but you're saying you got my number and this is police business, then I don't have a problem with that." When Respondent asked Lynch if he was under suspicion of doing something wrong, Lynch replied, "I don't know yet. . . . I don't believe so. . . . I need to find out from you. . . . I believe you could help." Respondent accused Lynch of "playing games" and not telling him anything. Lynch reiterated that the investigation was "about his phone number and how he got it" but that he did not want to go into specifics over the phone. Lynch offered to come to Respondent's residence. When Respondent stated that he would prefer to handle the matter over the phone, Lynch replied that they needed to meet in person so that he could confirm he was speaking with the right person. Lynch offered to meet wherever and whenever Respondent wanted. After Lynch clarified that what he wanted to discuss with Respondent was how he got his cell phone, Respondent stated, "Time is money, and very valuable, and the free time that I do have, I don't feel like wasting it on a simple conversation that I could have over the phone." When Respondent continued to refuse to meet with Lynch, Lynch told him, "This is a criminal case for criminal activity. Do you

want to be involved in that? Is that how you want me to go around with this? Cause I'm not looking to go that way with this. That's not what I'm looking at." Respondent told Lynch, "What favor do I owe you? I don't even know you." When Lynch offered to give Respondent his phone number so that Respondent could think about the situation and call him back, Respondent replied, "You think I'm really going to call you back?"

Respondent asked if he was the subject of an investigation, and Lynch replied that he was not. Respondent then stated, "If I'm not the subject, then I don't really have to discuss this." This prompted Lynch to state, "The way you're acting, I might make you a subject of the investigation now. . . . The 15 other people I spoke to got cleared. . . . Once I talk to you, I'm sure the same thing that they told me you're going to basically be telling me. . . . And that's what I want. But if that's not what you want, then I'm going to have to make you a subject." Lynch continued, "[Fifteen] other people I cleared. You're going to be the same way. All we got to do is get together and talk. We have to do this in person. . . . I'm not here to hurt anybody. . . . What I want to do is meet you, talk to you, and that's it. . . . Because this investigation is a criminal investigation, and we have to do this in person." Lynch continued, "It's about your cell phone, your phone number, and how you got it. Okay? My investigation leads into multiple numbers that were somehow compromised." In response, Respondent asked if his number was compromised and if somebody else had his phone number. Lynch again offered to give Respondent his phone number. Lynch told Respondent that if he did not hear from him within 24 hours he would consider Respondent to be "an unwilling participant" who would be investigated as a subject. Respondent replied, "Maybe I don't want to meet, okay. Maybe I got better things to do." Lynch again gave Respondent his name and

identified himself as a member of the PAPD Detective Unit. He told Respondent that he hoped Respondent would call him within the next 24 hours to let him know when would be a good time to meet. When Respondent asked what would happen if he did not call, Lynch replied, "I'm just going to continue my investigation. Where it goes it goes."]

On cross-examination, Lynch confirmed that prior to joining the PAPD he served as a police officer in this Department for six years. He testified that he was truthful with Respondent during their telephone conversation and he denied that he had tried to trick Respondent. Although Lynch intended to inform IAB of the outcome of the conversation, he did not tell Respondent during the conversation that IAB had already been notified about the PAPD investigation. Nor did he tell Respondent that he had already spoken with Person A and Person B. Lynch was being truthful when he told Respondent that he was not considered a suspect. Lynch did not say that as a ruse to get Respondent to meet with him. Although he did not know at that point exactly how Respondent obtained the phones, Lynch did not believe Respondent was involved in any theft. Well over a hundred phones had been stolen from the Federal Express warehouse. There were subsequent arrests made for the theft, and no connection was ever established between the perpetrators and Respondent.

Lynch first notified IAB about this investigation after his initial conversation with Person A. He had frequent dealings with IAB as the investigation progressed. IAB treated the matter as a criminal investigation. Had IAB wanted to discuss the case directly with Respondent, the discussion would have had to have taken place under the guidelines set forth in the Patrol Guide for official Department interviews. Had Respondent been the subject of an official Department interview, he would have had immunity from criminal

prosecution. Unlike IAB, Lynch was not bound by the guidelines for official Department interviews. Lynch informed IAB before the November 3 telephone call that he planned on speaking with Respondent, and he turned over to IAB the recording of the call shortly after it took place. Lynch did not let Respondent know that the call was being recorded. The call was made to Respondent's personal cell phone while he was at home. Lynch explained that he did not go to Respondent's command to meet with him during work hours because he did not want to embarrass him. Although Respondent did not want to meet Lynch in person, he did not refuse to answer questions. At one point during the call when Lynch informed Respondent that the investigation dealt with where he got his cell phone number, Respondent told him that he got his phone from AT&T. At no point during the call did Lynch mention phones being stolen from Newark Airport, Person A, or Person B. Lynch did not want to reveal any information over the phone.

While Lynch testified that he never considered Respondent a subject of the investigation, he initially told IAB that Respondent was selling stolen iPhones. He conceded that this did, in fact, paint Respondent as a suspect. The week after the November 3 call, he reported to IAB that Respondent was no longer being viewed by PAPD as a suspect.

On redirect examination, Lynch confirmed that Respondent never attempted to call him after he left a business card for Respondent. Nor did Respondent ever attempt to arrange to meet Lynch in person after the November 3 call. He reiterated that he called Respondent two more times, but Respondent was not responsive. At no point did Respondent assist in Lynch's investigation.

Sergeant Javier Santos

Santos, a ten-year member of the Department currently assigned to the Bronx Warrants Division, worked at IAB between 2009 and 2012. During that period, he handled the Department's investigation pertaining to PAPD's report that Respondent was possibly involved with stolen cell phones. Santos participated in Lynch's interviews of Person A and Person B. Person A stated that he bought three iPhones from Respondent, and Person B stated that she received one iPhone from Respondent as a gift.

During the course of the investigation, Santos had the opportunity to listen to Lynch's November 3, 2009, telephone call with Respondent. Santos was stuck by Respondent's lack of cooperation and refusal to meet with Lynch. Lynch was trying to arrange a time to meet in person, but Respondent was unwilling do so. To Santos' knowledge, Respondent never notified the Department about PAPD's attempt to meet with him to discuss stolen iPhones.

Santos also had an opportunity to participate in a May 25, 2010, official Department interview of Respondent. The main objective of the interview was to ascertain where Respondent obtained the cell phones that he gave to Person A and Person B. After the interview, a supervisor instructed Santos to bring charges against Respondent for impeding the Department's investigation. When investigators asked Respondent during the interview if he had ever been in contact outside of his duties with another police department, he responded, "Not to my knowledge." Because Santos was aware of Respondent's November 2009 telephone contact with Lynch, he knew that Respondent's answer was not accurate.

When investigators asked Respondent during the interview how long the conversation with Lynch lasted, he replied, "Maybe two minutes." This answer was not accurate, as the conversation actually lasted more than 20 minutes. When asked what the conversation was about, Respondent replied that "it was kind of vague" and mysterious." Santos did not agree with these descriptions of the conversation, as Lynch was clear that he wanted to meet with Respondent to talk about cell phones. When asked how he obtained the cell phones, Respondent replied that he was not certain, that he switched cell phones and could not recall where he purchased them. When asked how many phones he had purchased off of eBay, Respondent replied, "I couldn't tell you." Santos believed that this response impeded the investigation because Respondent was not providing the information needed to proceed with the investigation. When asked for the name of the person to whom he had given the stolen iPhone, Respondent did not provide a name until four questions later. Santos explained that this impeded the investigation because it took investigators a little longer to get the information they wanted. When asked from where he purchased the iPhones, Respondent did not answer until several questions later. Again, this made investigators wait longer than necessary to obtain information. Due to Respondent's impeding of the investigation, investigators had to take the additional steps of obtaining new subpoenas for eBay, Apple, and Craigslist. They also had to conduct more interviews of Lynch, Respondent, a confidential informant, and one other individual. Respondent was asked the same questions in his second interview as he was in his first, but he still failed to clarify the situation. [DX 2 is the transcript of Respondent's official Department interview.]

On cross examination, Santos confirmed that from the beginning of the investigation Respondent was the subject of a possible criminal action for possession of stolen property. When asked why investigators did not immediately bring Respondent in for an official Department interview, Santos explained that according to IAB practices all subjects are interviewed at the end of the investigation. He confirmed that because officers who are brought in for official Department interviews get immunity from criminal prosecution, investigators do not conduct interviews until they receive notification from the district attorney's office that no arrest will be made. The IAB investigation into Respondent's alleged misconduct commenced on August 5, 2009, and a decision was made early on not to conduct an official Department interview of Respondent because investigators wanted to preserve the option of arresting him. Instead of interviewing Respondent directly, IAB investigators monitored PAPD's investigation. According to Santos, Lynch did not inform IAB in advance about the November 3 telephone call.

Santos confirmed that members of the service have a duty to cooperate with other law enforcement agencies. He agreed that PAPD investigators who wanted to speak with Respondent could have notified Respondent at work via the chain of command. IAB did not want Respondent to realize that he was the subject of a Department investigation. Lynch called Respondent at home on November 3 instead of reaching him through the Department. While Lynch did not lie to Respondent during the telephone conversation, Santos agreed that Lynch was "a little vague." Lynch did not mention Person A. Santos agreed that Lynch treated Respondent in the manner that a detective would treat a suspect. Lynch told Respondent that he was not the subject of an investigation even

though this was not true. According to Santos, an officer must inform the Department whenever he is involved in an investigation, whether or not he is the subject of the investigation. Respondent never told Lynch that he would not cooperate in the investigation; he just told Lynch that he would not meet with him in person. Respondent provided answers when asked direct questions.

At the start of the May 25, 2010, interview, Respondent was told that he was being investigated for possessing stolen property and failing to notify IAB. Santos confirmed that this was the first time that Respondent learned that allegations had been made against him. Santos agreed that Respondent's statement at his official Department interview that the November 3, 2009, telephone conversation had lasted "just a couple of minutes" did not, by itself, impede his investigation. He explained, "I believe it wasn't that question per se" that impeded the investigation rather, "It was the combination. It wasn't just that question." After Respondent described the subject of the November 3, 2009, phone call as "vague" and "mysterious," Santos asked him if Lynch had brought up anything specific. To this question, Respondent replied, "They mentioned something about phones. They didn't clarify. I actually questioned them. They refused to answer any of my questions so I ended the conversation."

During the course of the investigation, Santos learned that Respondent goes through five or six cell phones a year. Respondent explained to Santos that he regularly traded in his phone whenever a new model of phone was released. He had four different cell phones at the time of the interview, and he could not specifically recall where he got the phones from.

He explained to Santos that he acquired his phones from different places, including the store and at times eBay. Respondent replied affirmatively when asked in the interview if he ever gave anybody a cell phone for free. It took four follow-up questions before Respondent provided Person B's name. Santos explained that it is the Department's view that this impeded the investigation because Respondent should have responded with Person B's name on the initial question. Santos never specifically asked Respondent if he ever gave a cell phone to Person B.

Santos agreed that even if Respondent had provided more direct responses at his official Department interview, investigators would have still needed to take post-interview investigative steps, such as obtaining subpoenas. Follow-up investigatory steps need to be taken whenever new information is obtained through an interview. The reason that a confidential informant was interviewed after Respondent's interview had nothing to do with what Respondent said at his official Department interview.

On redirect examination, Santos clarified that he believed that Respondent had been uncooperative during the November 3, 2009, phone conversation because he stated that he was unwilling to arrange an in-person meeting with Lynch. Respondent was required to notify IAB if he was aware of an allegation of misconduct regarding himself. Because Respondent did not provide clear answers in his official Department interview, Santos had to do additional investigative work.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, a 19-year member of the Department who has been assigned to the Midtown South Precinct since his graduation from the Police Academy, testified that he has never before been the subject of Charges and Specifications.

Respondent recalled that over the last ten years he has owned 50 to 70 cell phones. He has had at least two cell phones at any given time, and he currently has four. He explained, "I usually get the newest, latest cellphone out. It's just been like my thing. Ever since the existence of cellphones." He continued, "I buy them in retail stores, through the carriers, different promotions. Some on the internet sites. . . . It's technology. It's constantly moving forward. . . . A phone can't keep up to the amount of needs that I have. I progress along with the phones and technology." He tries to find bargains when shopping for new phones. He looks for deals on internet sites, including eBay and Craigslist. Because the sites he shops on are legitimate, he does not worry that what he is buying might be stolen. All of his phones have been in his name.

Respondent has known Person A, a lieutenant employed by the New York City Fire Department, for more than 20 years. At one point, Person A expressed interest in getting a new cell phone, and Respondent told him that he might be able to help. Respondent purchased cell phones for Person A on a website, but Respondent could not recall specifically which website. Person A paid Respondent for three phones, two of which were for his daughter.

Respondent also gave Person B, another friend of his, a phone that he purchased on the internet as a gesture of gratitude for taking care of his dog.

Respondent had never met or spoken with Lynch prior to the November 3, 2009, telephone call. Respondent asserted that during their telephone conversation, Lynch was very vague about the subject matter of the investigation. Lynch refused to answer Respondent's questions. Lynch wanted to meet Respondent in person, but he would not explain to Respondent what he wanted to meet about. Respondent was not even certain at that time that Lynch was actually a law enforcement officer since Lynch was vague about that matter as well.

Respondent explained that in the past when a member from another agency (including the PAPD) wanted to meet with him for assistance, he would receive a notification at his command. He never before got a request for assistance by way of a call on his personal cell phone. Lynch wanted to meet with Respondent while Respondent was off duty. Respondent was willing to give Lynch any information he wanted over the phone, but the only question that Lynch asked was when they could meet in person. Lynch did not give a reason why he would not talk more about the investigation over the phone. Lynch continued to be vague when Respondent directly asked if he was the subject of the investigation.

After the call, Respondent did not notify IAB that an allegation of corruption had been made against him. Respondent explained that he did not make a notification because Lynch never told him that he was under suspicion of doing anything wrong. Respondent testified, "Nothing was very clear as far as any form of corruption on my part or anyone else's."

Prior to his May 25, 2010, official Department interview, Respondent did not have an opportunity to listen to the recording of his November 3, 2009, telephone

conversation with Lynch. Respondent testified that he believed that at his official Department interview he was very cooperative with Department investigators. He at no point tried to impede the investigation. When he was asked why he stated in his interview that the conversation with Lynch lasted just two minutes, he explained, "At the time it felt like a couple of minutes. Maybe it was a figure of speech. I didn't have a stopwatch. . . . I knew it was a repetitive conversation, but I couldn't tell you how long it went." Respondent believed he was being truthful during the interview. When he finally had the chance to listen to the call, he was surprised to realize that it had actually lasted more than 20 minutes.

When he was asked during his official Department interview about the subject of the phone call, Respondent asserted that he had answered this question to the best of his ability and that he was not trying to conceal the subject matter of the conversation from his interviewers. When he was asked during the interview where he got his phones from, he told investigators what he knew at the time to the best of his knowledge. When asked how many phones he had purchased on eBay, Respondent did not know the exact number because he had purchased a lot of things on eBay. When asked about giving cell phones to people for free, he answered that line of questioning to the best of his ability. When asked about items he purchased from the Apple Store, he responded that he could not provide an exact answer and compared it to buying a shirt. He explained what he meant by his response, "There's even more than one Apple Store. I've been to probably all of the Apple Stores in the city. I've been to a lot of stores. I buy a lot of things. I don't keep a record as far as where I buy what from where." He was not trying to impede the investigation when he could not answer specifically where he purchased a certain phone.

At no point did Respondent have any idea that cell phones he had purchased had been stolen. He would have immediately alerted the authorities had he been aware of that.

On cross examination, Respondent testified that he could not recall exactly how much he spent on the five cell phones in question, but he believed that they were reasonably priced. He did not sell the three phones to Person A at a profit. Respondent asserted that even though Lynch had identified himself as a member of the PAPD at the start of their November 3, 2009, telephone conversation, he was uncertain as to whether Lynch was who he said he was until later in the conversation. When he was asked why he did not agree to meet Lynch in person, Respondent testified that Lynch "didn't explain what was the purpose of me meeting him. He failed to give that information. . . . I felt it was an unreasonable request." Lynch wanted to meet on Respondent's personal time. At one point, Respondent told Lynch that he would be willing to meet if Lynch came to his command.

When asked if he ever received a business card from Lynch, Respondent testified, "I believe a card was left, but I have a doorman. I personally don't get my own mail. Someone gets that for me. And I believe a message was left that someone stopped by, but there was no explanation of why this individual stopped by." He did not attempt to call Lynch back after learning that Lynch had stopped by the building to speak with him. Respondent asserted that he had answered to the best of his knowledge when he was questioned at his official Department interview about where he had purchased his cell phones. Respondent confirmed that he never met with Lynch, nor did he ever consult with anyone about the November 2009 phone call. Respondent asserted that he believed that Lynch would come to his command if the matter were truly serious.

FINDINGS AND ANALYSISSpecification No. 1

It is charged that Respondent, while off-duty on November 3, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by refusing to cooperate with an on-going investigation being conducted by the Port Authority Police Department (PAPD) from Newark International Airport regarding stolen iPhones.

I find Respondent Guilty based on the statements Respondent made to Lynch during their telephone conversation on November 3, 2009 (DX 1). As a result of what Lynch told him during their conversation and since (as Respondent acknowledged during the conversation) Lynch had previously left his business card at Respondent's residence, Respondent had good reason to believe that Lynch was who he said he was, a detective assigned to the PAPD who was conducting a criminal investigation. It is clear from what Respondent said to Lynch during this conversation that Respondent was either not aware of or willfully chose to ignore his duty as a uniformed member of the service (UMOS) to at least try to cooperate with Lynch by complying with Lynch's request that he help PAPD regarding their criminal investigation.

After Respondent asked Lynch, "You're calling me and you're saying you need my help on something and you want me to meet you?" and after Lynch answered, "You're right, and I said I'll come to you if you want me to come to you, I'll come to you," Respondent told Lynch, "What favor do I owe you? I don't even know you."

That Respondent believed that he had the right to ignore with impunity Lynch's request that they speak in person is reflected by the fact that after Respondent asked

Lynch, "Am I the subject of some kind of investigation?" and after Lynch replied, "No. You're not the subject," Respondent told Lynch, "Then, no. Then it's, okay, if I'm not the subject, then I don't really have to discuss this." After Lynch responded, "So then you don't want to meet with me?" Respondent told Lynch three times, "I don't have to."

Respondent argued that he was under no duty to agree to appear in person to be interviewed by Lynch. I find that Respondent was under a duty to at least try to cooperate with Lynch by complying with Lynch's request that Respondent call him back. Although when Lynch asked Respondent to call him back at a time that was convenient for Respondent, Respondent said, "Okay," Respondent never did call Lynch back. Rather, Respondent acted as if Lynch had never requested his help. I find that Respondent's true attitude regarding Lynch's request for help is reflected by his statement near the end of the conversation when he told Lynch, "Maybe I don't want to meet, okay. Maybe I got better things to do..."

Respondent is found Guilty of Specification No. 1.

Specification No. 2

It is charged that while he was off-duty on November 3, 2009, Respondent became aware of an allegation of corruption or other misconduct involving a MOS, himself, and that he failed to notify IAB.

The Assistant Department Advocate (the Advocate) argued that based on what Lynch said to him during their telephone conversation, Respondent should have been aware that he was the subject of an allegation of corruption or other misconduct. The recording of their telephone conversation (DX 1) does not support the Advocate's

contention. At the very start of their conversation, Lynch told Respondent, "Your name came up in an investigation and we're hoping you could actually help us out." Thus, it is clear that from the outset of their conversation, Lynch was telling Respondent that he was seeking his assistance as a cooperating witness. Although Lynch did state that "it's more or less I'm thinking that you could clear yourself," Lynch quickly added, "I think more of you as a witness than anything else."

Later in the conversation, Lynch told Respondent "I don't believe you to be involved in anything," and "who we're investigating, who we don't believe you have any involvement in, but we have to clear your name..." When Respondent directly asked Lynch, "Did I do something?" Lynch responded, "I don't know yet," but quickly added, "I don't believe so," and then repeated, "I believe you could help." Lynch later told Respondent, "I'm trying to help you. I'm not here to hurt you," and "once I talk to you...you're going to be going home."

Finally, and most significantly, when Respondent directly asked Lynch, "Am I the subject of some kind of investigation?" Lynch responded, "No. You're not the subject." Although near the end of their conversation a frustrated Lynch told Respondent that if he refused to appear for an in-person interview "then I'm going to have to make you a subject" and "then I'll investigate you as a subject," it is clear that this comment was merely saber-rattling designed to get Respondent to agree to an in-person interview.

Since the Department failed to meet its burden of proving that on November 3, 2009, Respondent became aware that he was the subject of an allegation of corruption or other misconduct, Respondent is found Not Guilty of Specification No. 2.

Specification No. 3

It is charged that Respondent impeded a Department investigation “by making vague and non-responsive answers” at his May 25, 2010, official Department interview “which prevented the Department from coming to a conclusion as to what transpired with regards to the Port Authority Police Department’s investigation of stolen I-Phones from Newark International Airport.”

In a Bill of Particulars, the Advocate asserted that Respondent provided “vague and non-responsive answers” to several specific areas of questioning. I have divided these into three categories. The first two categories concern the telephone conversation between Lynch and Respondent on November 3, 2009. The third category concerns questions regarding how Respondent acquired cell phones and who he gave them to.

Question about the length of time the conversation between Lynch and Respondent lasted

During his official Department interview, Respondent was asked, “How long did you talk to the person that claimed to be from Port Authority Police Department?” Respondent replied, “Maybe two minutes if that.” The recording of the conversation (DX 1) establishes that it lasted 28 minutes. Although Respondent’s recollection that the conversation lasted only “maybe two minutes if that,” was inaccurate, his answer was not “vague” and it was not “non responsive.” Moreover, Santos conceded that Respondent’s statement that the phone conversation lasted only two minutes did not, in and of itself, impede his investigation. Finally, the Department did not show how the fact that this conversation lasted 28 minutes rather than two minutes “prevented the Department from

coming to a conclusion as to what transpired with regards to the Port Authority Police Department's investigation of stolen I Phones from Newark International Airport."

Questions about the subject matter of the conversation

At the start of his official Department interview, Respondent was told that he was being investigated for "criminal possession of stolen property and failure to notify IAB" and he was immediately asked, "Have you ever been in contact outside your duties by any other department?" and "Do you remember ever being contacted by Port Authority Police Department?" Thus, Respondent was clearly and specifically alerted to the fact that he was going to be questioned about being contacted by PAPD. When Respondent was then asked, "Okay, you don't remember what the subject of the conversation was about?" Respondent replied, "It was kind of vague." Respondent was then asked, "Can you elaborate on that, what they were trying to?" Respondent replied, "They were like mysterious. They really didn't say." When Respondent was then asked, "Did they bring up anything to you?" Respondent replied, "They mentioned something about phones and then they didn't clarify. I actually asked them and they refused to answer any of my questions."

The recording of the telephone conversation (DX 1) establishes that Lynch told Respondent that his cell phone number had appeared "on somebody's call list" and that Lynch needed to know "about your phone number and how you got it," and that Respondent told Lynch that he had purchased a phone and a phone number "from AT&T" and that he "had this phone for years." Most significantly, when Lynch told Respondent that his cell phone number had been "compromised," Respondent asked

Lynch, "My number being compromised? So somebody else has my phone number?

Well this is the first I'm hearing about that."

Since the telephone conversation between Lynch and Respondent took place on November 3, 2009, and Respondent's official Department interview was conducted on May 25, 2010, Respondent was being asked to recall a telephone conversation that had taken place nearly seven months earlier. Although, given the length of time between the conversation and the questioning it would be unreasonable to expect Respondent to remember every detail of this conversation, under the circumstances here Respondent should have been able to recall more than just that the conversation concerned "something about phones." The fact that Respondent received a telephone call at his residence from a man who identified himself as a PAPD detective who (as Respondent acknowledged) had previously left his PAPD business card at Respondent's residence, constituted an unusual occurrence. Also, the fact that Lynch told Respondent that his own cell phone number had been "compromised" would have made this a memorable conversation as is reflected by Respondent's statement to Lynch that "this is the first I'm hearing about that."

A member who is being questioned at an official Department interview is not only required to provide answers that are truthful, the member is required to cooperate with his interviewers by making a genuine attempt to recall the details of the event that is the subject of the questions being posed to the member. Since this conversation was memorable, Respondent should have been able to recall more than just that the conversation was "something about phones." Respondent should have been able to recall that Lynch (contrary to Respondent's claim that he "didn't clarify") had stated that he

was inquiring about Respondent's own cell phone "and how you got it," that Respondent's cell phone number had appeared "on somebody's call list," and that Respondent's own cell phone number had been "compromised."

Thus, I find that Respondent's answers to the questions posed to him at his official Department interview regarding what subject Lynch had raised during their telephone conversation were vague and non-responsive.

However, I reject that portion of the charge that contends that Respondent's answers "prevented the Department from coming to a conclusion as to what transpired with regards to the Port Authority Police Department's investigation of stolen I-Phones from Newark International Airport." The Advocate did not establish that even if Respondent had accurately reported every word that he and Lynch had exchanged during their conversation the Department would then have been able to come "to a conclusion as to what transpired with regards to the Port Authority Police Department's investigation of stolen I-Phones from Newark International Airport."

Questions regarding where Respondent purchased cell phones and who he gave them to

At his official Department interview, Respondent was asked numerous questions about how many cell phones he owned, the numbers for these four phones, what types and models of phones he owned, and what companies were the carriers for these phones. He answered all of these questions and provided specific information that he had purchased his phones at stores, from eBay and from Craigslist and that he had purchased his iPhone at an Apple Store.

The Advocate contends that Respondent provided vague and non-responsive answers to the following questions that were posed to him at his official Department interview:

Investigator: Out of these four phones, do you recall how you acquired all four?
Respondent: I couldn't tell you that. But yeah, out of these four phones, I've actually switched these phones. I switched the, well, I switched lines. I go through other phones. I get the promotion, whatever.
Investigator: Do you recall how many phones you purchased off of eBay?
Respondent: I couldn't tell you.
Investigator: Have you ever given a cell phone to anybody for free?
Respondent: Yeah.
Investigator: To who?
Respondent: I've given a lot of cell phones for free.
Investigator: Have you ever given an i-Phone?
Respondent: Yes, I have.
Investigator: Do you remember to whom?
Respondent: A friend of mine.
Investigator: Do you know her name? I mean, do you know the person's name?
Respondent: You're saying her, a friend of mine, Person B.
Investigator: Do you recall where you purchased that phone from?
Respondent: Probably Apple Store.
Investigator: From that store?
Respondent: I couldn't tell you. I don't, that's like asking where I buy a shirt from you know.
Investigator: You're not sure where you got that phone?
Respondent: I'm not sure.

Since the Department offered no evidence to refute Respondent's testimony that he has purchased so many cell phones and given away so many that he could not recall where he purchased every cell phone he has owned, the Department failed to prove that Respondent's answers to the questions cited above were vague and non-responsive.

In conclusion, I find Respondent Guilty in Part of Specification No. 3 in that his answers to the questions posed to him at his official Department interview regarding what subject Lynch had raised during their telephone conversation were vague and non-responsive.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the Department on August 30, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of engaging in conduct prejudicial to the good order, efficiency or discipline of the Department by refusing to cooperate with an on-going investigation being conducted by the PAPD regarding stolen iPhones. Respondent has also been found guilty of impeding a Department investigation by providing vague and non-responsive answers to certain questions posed to him at his official Department interview.

The Advocate recommended that the penalty to be imposed on Respondent consist of forfeiting 30 vacation days and serving one year on dismissal probation.

Although a forfeiture of 30 vacation day is consistent with the penalties imposed in a recent case involving a refusal to cooperate with an investigation and in recent decisions involving providing incomplete answers to questions posed at official Department interviews, the additional imposition of one year of dismissal probation is not.

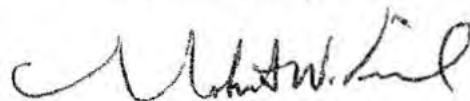
In *Case No. 2010-86441* (June 27, 2012), a 25-year officer, who had two prior disciplinary adjudications, forfeited 30 vacation days after he was found guilty of failing to cooperate with a Department investigation of a grand larceny. In that case, the officer refused to be interviewed by an investigator about the theft of Rolex watches that he had

provided security for during his off duty employment as an armed escort. In that case, unlike here, the officer was also found guilty of having failed to notify IAB that he was a subject of the investigation that was conducted by the insurer of the stolen watches.

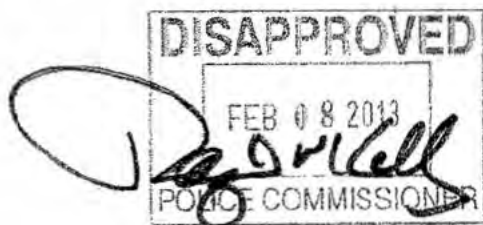
In *Case Nos. 2010-1843 and 2010-1846* (June 12, 2012) a six-year officer and an eight-year officer, who were partners, each received a penalty of 30 vacation days after they each pleaded guilty to having impeded an official Department investigation by giving incomplete and inaccurate answers when they were each questioned on two occasions. In those cases, each officer also pleaded guilty to several other charges involving their joint failure to conduct a proper investigation while on duty.

Respondent here is a 19 year MOS who has no prior formal disciplinary record. It is recommended that Respondent forfeit 30 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials



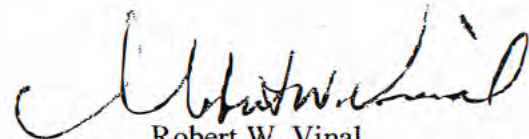
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SCOTT VINCENT
TAX REGISTRY NO. 905247
DISCIPLINARY CASE NO. 2010-2270

The Respondent received an overall rating of 3.0 on his 2011 performance evaluation, 3.0 on his 2010 evaluation, and 4.0 on his 2009 evaluation. He has been awarded one Meritorious Police Duty medal. [REDACTED]

[REDACTED] He has no prior formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials